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Ambivalence and Change in the Public Status of Religion in Romania during the 2008-2012 Legislative Term¹

IULIANA CONOVICI

The years 2007-2008 have been a turning point in terms of the legal definition and practical application of the Romanian State's policies on Church-State relations: in 2007, the Law no. 489/2006 on religious freedom and the general status of denominations came into force, thus bringing to a point of normalisation the status of *religious denominations* in the Romanian legal system, after sixteen years of functioning under a largely un-applicable communist-time Decree-Law no. 177/1948 on the general status of religious denominations.

The same year, in July, Patriarch Teoctist (Arăpașu) died, and the energetic Metropolitan of Moldova, Daniel Ciobotea, took his place as the leading figure of the Romanian Orthodox Church, the largest religious body in Romania, announcing a change of pace in the latter's engagement with the Romanian society – and with the State. As early as October 2007, under the new Law no. 489/2006, the Romanian Patriarchy had already signed with the Romanian Government a Protocol of cooperation in the field of social inclusion, followed, in July 2008, by a new Protocol of cooperation in the field of social-spiritual and medical assistance between the Romanian Patriarchy and the Ministry of Health². A new Statute for the organisation and functioning of the Romanian Orthodox Church was adopted and recognized by the State in 2008, clearly illustrating the latter's commitment to develop its status as a public religion.

In 2008, the Romanian Government also recognised the *Codex iuris canonicis* and the *Codex canonum Orientalium Ecclesiarum* as statutory documents for the Roman- and Greek-Catholic Churches respectively³, as well as the new Statutes of almost all the recognised religious denominations⁴.

However, as it has been shown, this clarification of the general status of religious *denominations* did not encompass all the legal areas pertaining to the general status of *religion* as such – i.e. affecting not only religious institutions, but also the social

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² Discussed in Iuliana CONOVICI, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice*, vol. 2, Eikon (Theologia socialis), Cluj-Napoca, 2010, pp. 567-561.

³ Government's Decision no. 1218/2008, published in *Monitorul Oficial*, part I, no. 798 bis, November 27, 2008.

⁴ The Statute of the Unitarian Church of Transylvania was recognised by the Government only in 2010 (Government's Decision no. 641 of July 7, 2010, published in *Monitorul Oficial*, part I, no. 595 of August 23, 2010).

status of (potentially) religiously-informed social values (like that of public morality) and legal institutions (like the family or the definition of the human person). The status of religiously-informed beliefs and values in the public sphere had likewise remained in suspense. Efforts to change legislation in these areas in particular had proven particularly problematic in the past¹.

As this is very recent history, there is very little, if any scholarship on the past few years' developments both in the area of the status of *religions* (plural) and of the status of *religion* (singular) in the Romanian public space. The tension between the high level of religious affiliation and confidence in "the Church", as revealed by successive polls, and the lower commitment to religious values and their subsequent impact on social mores that defined the first two post-communist decades, between inherited tradition and voluntary commitment to a particular worldview² remains to this day unsolved. Preliminary results of the 2011 census demonstrate, despite controversies surrounding the administration of the census itself and regardless of the overall decline in the general population, a remarkable consistency with pre-existing trends in the religious affiliation of the Romanian population. Thus, while "historical denominations" (including the Orthodox Church, the Catholic Church and the first generation Protestant Churches) experience a slight decline, the so-called Neo-Protestant or Evangelical Churches (and particularly the Pentecostal community) continue to show signs of sustained growth. The one feature that draws attention, a multiplication of declared non-affiliation and atheism respectively, remains marginal³.

Keeping in mind this consistency in the religious affiliation of the Romanian population, we may well wonder if and how this translates (if that is the case) in the legal developments in the area of the public status of religion. In order to verify this, we propose an exploratory enterprise. To that purpose, we shall undertake here an assessment of the main themes of debate on Church and faith-related issues during the last legislative term.

We seek to ascertain what were the proposed changes to the legislation pertaining to the public status of religion; which were the main themes of debate, and the most controversial; who was involved in effecting these changes (if any). This analysis will in turn help us understand how and to what extent the legal status of religion in Romania has undergone significant changes during these past four years.

To that end, we shall examine first and foremost the process of legislative production and the debates surrounding it in the Romanian Parliament. The Chamber of Deputies database concerning the legislative process (online at www.cdep.ro) provides us with an extensive body of documents that will allow us analyse several such themes more thoroughly. Government (Emergency) Ordinances are also discussed and possibly amended in the Parliament, and hence we were able to look into the production of the main body of legislation in our field of interest. We will also look at Government

¹ Iuliana CONOVICI, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice*, vol. II, cit., pp. 727-738.

² Daniel BARBU, *Republica absentă. Politică și societate în România postcomunistă*, 2nd edition, Nemira, București, 2004, pp. 286-289; Sorin GOG, "Individualizarea experienței religioase și erodarea funcțiilor eclesiale în România postsocialistă", *Studia Politica. Romanian Political Science Review*, vol. VII, no. 3, 2007, pp. 791-802.

³ According to the preliminary results of the census, Table on the structure of the religious affiliation of the population, by counties, <http://www.recensamantromania.ro/wp-content/uploads/2012/08/TS7.pdf> (accessed: January 28, 2013).

Decisions, where they may prove relevant for our field. In order to acquire further data on the public debates and polemics surrounding some aspects of the abovementioned legislative production, alternative sources of information (originating with the public media, the various Churches, the NGO milieu etc.) will be used.

The scope of this study is limited: this is an effort of exploration of a (yet) understudied field; it is based on a qualitative analysis of the documents that were deemed most relevant; and it includes only a few areas of legislation and topics of interest – and debate. Thus, one notable issue, the Education reform, which has however taken up a considerable part in Parliamentary and Government debates, and which was addressed elsewhere, will not be presented in detail here. It will suffice to say, in that respect, that, though in terms of legislation on religious education in public schools there have been no significant changes, in the articulation of the general principles of education upheld by the Romanian state, a slight terminological shift may suggest the development of a “separationist” model of Church-State relations that may, in time, compete with the “benevolent neutrality” approach to religion of the Law no. 489/2006 on religious freedom and the general status of denominations¹. Thus, the issues we address in this paper are to be understood as only a part of the bigger picture, and not the picture itself.

Indeed, despite a politically troubled, though reform-bent legislative term, there has been, on a superficial examination, little legislation aimed *directly* at introducing changes in the general status of religious denominations during the past four years. A closer look reveals, however, changes in various policies that do touch – directly or indirectly – the status of religious denominations, as well as of religious beliefs, in the public space. An administrative change in the status of the State Secretariat for Religious Denominations, the key State institution in charge of administering day-to-day Church-State relations, though not widely debated, had signified an interesting change in the Government’s understanding of the *political* relevance of Church-State relations. Reforms in areas such as that of wages in the public sector, health and social assistance, family law and reproductive laws, funeral law and down to the introduction of new holidays, all participate or signify potential changes in the public status of religion.

From Culture to the Prime Minister (and Back Again?): the State Secretariat for Religious Denominations

Placed under the umbrella of the Ministry of Culture for almost two decades, in a move to distance itself from its highly politicised and authoritarian past, the State Secretariat for Religious Denominations had nevertheless remained a key element in the articulation and functioning of Church-State relations in post-communist Romania.

At the beginning of 2010, however, the PDL-led Government, under Prime Minister Emil Boc, issued a Government Decision² whereby the State Secretariat was

¹ Discussed in Iuliana CONOVICI, “The Romanian Parliament on Religion (2008-2012): Normalisation or Reconfiguration?” (under publication), where we also propose a quantitative overview of the Romanian Parliament’s legal production over the past few years.

² Government’s Decision no. 22/January 6, 2010, published in *Monitorul Oficial*, no. 17, January 6, 2010.

cut off from the Ministry of Culture and placed under the direct authority of the Government's General Secretariat. The Government's intents with this move were not made clear: in the introductory argument to the document, there was nothing more than an obscure allusion to the fact that the Government deemed all religious denominations-issues to be "particularly important"¹.

The State Secretariat for Religious Denominations was thus to retain its status, but would come under the direct jurisdiction of the Prime Minister, who would henceforth directly name the State Secretary. This move appeared to signify a politicization of the institution, and a further increase in the authority of the Prime Minister. It had possibly been a trade-off within the governing coalition, whereby the UDMR would get a Minister of Culture in the person of Kelemen Hunor (as of December 23, 2009)², but without authority over the delicately balanced architecture of Church-State relations.

This was the first time after 1990³ when the Secretariat was no longer a part of a specific Ministry, being placed under the direct authority of the Prime Minister, and its severance from the Ministry of Culture was not well received, as the move, rather than raise the profile of the Secretariat, would actually lead to its demotion in terms of both status and autonomy.

In the aftermath of the fall of the last PDL-led Government and the installation of the provisional USL Government led by Victor Ponta, the 2010 decision was partially reversed, as the State Secretariat for Religious Denominations was reintegrated in the Ministry of Culture and National Patrimony by the Government's Decision no. 563/2012⁴. However, this decision signified a further demotion at the top of the institution: the post of State Secretary was suppressed, and for the first time in its post-communist history, the institution, while preserving its status as a State Secretariat, would henceforth be administered by a Director-General.

This appears not to be the end of the tribulations of the State Secretariat for Religious Denominations. Shortly after the general elections that confirmed the USL's grip on power, a draft Government Decision for the reorganisation of the Ministry of Culture and National Patrimony, currently under public debate, suggests the possibility that the Government may yet again switch back to the solution adopted in 2010, and place the State Secretariat for Religious Denominations, once more, directly under the Prime Minister's authority⁵.

The severance of the State Secretariat for Religious Denominations from the Ministry of Culture is likely to lead to a loss of the institution's implicit prestige associated with the Ministry of Culture, and to a corresponding symbolic disconnection

¹ See the Introductory argument to the Government's Decision no. 22/January 6, 2010, available online at: <http://www.gov.ro/upload/articles/111583/nf-hg-22-2010.pdf>.

² Some concerns had been voiced in the mass-media on the attribution of the Ministry of Culture to an ethnic Hungarian ("Boc: relația cu bisericele va fi gestionată de Secretariatul de Stat pentru culte de la Guvern", *Mediafax*, 21. 12. 2009, <http://www.mediafax.ro/cultura-media/boc-relatia-cu-bisericele-vafi-gestionata-de-secretariatul-de-stat-pentru-culte-de-la-guvern-5196164>, accessed: January 28, 2013).

³ A Ministry for Religious Denominations had briefly been a self-standing organism under the provisional Government, but by July 1990 it had been reorganised into a State Secretariat.

⁴ Published in *Monitorul Oficial*, part I, no. 378, June 6, 2012.

⁵ See the draft project online on *Cultur@ pe Net*, a website of the Ministry of Culture and National Patrimony, at: <http://www.cultura-net.ro/DezbateriDownload.aspx?id=576> (published on January 8, 2013).

between the general status of religious denominations and their status as cultural as well as religious institutions. It would also signify a higher degree of politicization of the public authorities' dealing with the regime of Church-State relations. Finally, this signifies a sort of isolation of the religion-related policies from other society issues, echoing a certain legal *compartmentalization* of these issues that has been manifest in the Romanian State's approach to religion throughout the post-communist period¹.

The Consolidation of "Social Partnership"

A controversial Draft-Law on the establishment of a partnership between Church and State in the field of social assistance was introduced in 2009. The legislative proposal (Pl-x 630/2009), supported by ninety PDL deputies and senators, had initially received a negative assent from the Government. The Draft-Law itself did not, however, create a stir until the year 2011, when, amended by the parliamentary committees in the Chamber of Deputies, it was eventually adopted with a sweeping support from all parliamentary parties.

At that point, criticisms against it sprang up from several actors. A number of civil society actors requested it to be sent back for re-examination, on grounds of introducing a discrimination between religious and civil society actors. The document would also receive consistent criticisms from one of the most prominent would-be beneficiaries of the Law, namely the Romanian Orthodox Church. On the drafting of this project, representatives of either the Orthodox or the Catholic Church had apparently not even been consulted. The President of Romania, borrowing arguments from civil society criticisms, argued that the Draft-Law was discriminating and that it risked a politicization of financing. He returned the Draft-Law to the Parliament for re-examination, where it remains under review until this day².

We should note that, in terms of the public status of religion, the Law maintains a certain ambiguity that remained unresolved in the Romanian legislation. Religious denominations are ranked as a category of civil society organisations (art. 6 kk)), but at the same time remain a distinct category – somewhere "between the State and the civil society"³.

A few months after the President had sent back this Draft-Law, a group of PNL members proposed (Pl-x 657/2011) an amendment of the Law no. 489/2006 on religious freedom and the general status of denominations, aiming, as they argued, to depoliticise the attribution of financial subsidies to local units of religious denominations⁴, by distributing all the State funding of religious denomination to the central bodies of each, and placing these in charge of their distribution "according to their own rules and priorities". Rejected by the Senate, and with a negative assent

¹ Iuliana CONOVICI, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice*, vol. II, cit., pp. 727-738.

² See also IDEM, "'Social Partnership' Between Church and State as a Field of Negotiation for the Public Status of Religion in Post-Communist Romania", paper presented at the International Conference "Religion and Politics in the Globalization Era, June 22-24, 2012, Cluj-Napoca.

³ Alexandru DUȚU, *Ideea de Europa și evoluția conștiinței europene*, All Educational, București, 1999.

⁴ See their Introductory argument: <http://www.cdep.ro/proiecte/2011/600/50/7/em657.pdf>.

from the Government, the legislative proposal is still under review in the Chamber of Deputies. It seems unlikely that it will be adopted in its current form.

While the dispute on the Draft-Law on Church-State partnership was under way, several Draft-Laws on various aspects of social services were introduced in the Parliament. Amongst them, Pl-x 421/June 20, 2011 on contracting social services, Pl-x 558/October 24, 2011 on the organisation and providing of social services, and Pl-x 613/November 8, 2011 – the Draft-Law of social assistance were setting the stage for a reform of social services in Romania. All these Draft-Laws, originating either from the Parliament or the Government ranked religious denominations (that is, recognized denominations according to Law no. 489/2006 on religious freedom and the general status of denominations) as “social services providers”.

Of the three legislative proposals, only the Government-initiated one was eventually adopted by the Parliament and become Law no. 292/2011 on social assistance¹. Under art. 37 (3) b), religious denominations are mentioned for the first time amongst the various types of private social services providers, together with NGOs and various other types of associations, enterprises or legal persons².

Furthermore, the Law enshrines the principle of *partnership* between the public social assistance system and private social services providers. The inclusion of religious denominations amongst the private social services providers followed the provisions of Law no. 489/2006, which deemed religious denominations as social services providers and upholds the principle of partnership between Church and State on social issues, and was deemed to help with the accreditation of religious denominations’ units in this capacity of social services providers.

As such, under art. 139 of the Law, religious denominations may also receive, either from the State budget or local authorities, subsidies that would serve to the continuation and development of their social services. This helped solve the problem that had been raised by the 2009 Draft-Law no. 630 with respect to the public financing of religious denominations’ social projects, and dealt at the same time with some of the contentious issues that had been tabled when the latter had been discussed (limitations on financing, discrimination between religious denominations and the various civil society actors etc.).

Church Financing

The growing media attention focused on the public financing of religious denominations, and on the financing of Orthodox Church activities in particular, has focused mainly on subsidies to the wages of the clergy and on financing the construction of Churches. These concerns have been, in their own way, reflected in the activity of the Parliament, as we shall see.

Though representatives of the Orthodox Church had, for example, emphasised the link between property restitutions and the development of the Church’s capacity

¹ Published in *Monitorul Oficial*, no. 905, December 20, 2011; online at: http://www.cdep.ro/proiecte/2011/600/10/3/pr613_11.pdf (accessed: January 28, 2013).

² The previous Law no. 47/2006 on the national system of social assistance (online at: http://www.cdep.ro/proiecte/2005/500/30/6/leg_pl536_05.pdf; accessed: January 28, 2013), dated sometime before the Law no. 489/2006’s gaining legal force had not taken into account religious denominations as relevant actors in the matter.

to act in the area of social work, stating that reclaimed properties would serve to finance social projects, the Romanian State has been – and remained – reluctant to deal decisively with the issue. The question was particularly delicate, since Church properties belonging either to the Orthodox, Catholic, or the traditional Protestant Churches had been extensive, and massive restitutions would dramatically change the structure of property ownership throughout the country.

We should also mention that all the MPs' legislative proposals for the edification of churches and/or other ecclesiastical buildings (PI-x 75/2009, 76/2009, 78/2009), including one for modifying some administrative procedures for the construction of the new Orthodox cathedral in Bucharest (PI-x 394/2010) have been promptly rejected. The same applies to another proposal (Draft-Law no. 66/November 17, 2010) on the issuing of subsidies to various associations providing social services (with a particular reference to Church-based associations).

Out of the five Draft-Laws concerning property issues, the only one that was denomination-specific (PI-x 668/December 14, 2009), aiming at the re-activation of the Romanian Orthodox Church Fund as a public law entity, was promptly discarded, as was another proposal stating that restitution of forested lands to religious denominations should be limited to 30 ha per ecclesiastic unit (PI-x 25/February 15, 2010); the only Draft-Law that eventually passed (Law no. 302/2009) dealt only indirectly with the restitution of buildings confiscated by the Communist regime.

While the issues discussed above were eventually brought to the fore and led now and then to public discussions, the reformation of the public system of salaries only marginally affected religious denominations, and was not a topic for *parliamentary* debates. A dramatic proposal by PDL-deputy Silviu Prigoană (BP 651/16.08.2010) to eliminate all public subsidies for the salaries of the clergy was withdrawn by its proponent even before entering the legislative process.

Thus, as we can see, with respect to the financing of the *social* activities of religious denominations, the Romanian State seems rather more inclined to take on some of the burden itself (with the related advantage of retaining the administrative supervision rights), and to justify this commitment as a form of indirect compensation for former property confiscations¹.

This trade-off would however be decided and administered by the Government and possibly (partly) by local authorities, but *not* by the Parliament, despite efforts by newly-elected members to introduce laws for the direct financing of some or other religious buildings.

That is also likely to be one of the reasons why, while the "social partnership" between Church and State has been further articulated and enshrined in the new laws on social and medical assistance, there were little, if any significant advances in another area, that of the restitution of properties confiscated at some point from religious denominations by the Romanian State.

The Curious Case of the "Biometric Passports"

Though, on the surface, the project had little, if anything to do with religion, the main focus of religion-related public debates in 2009 was none of the Draft-Laws

¹ Iuliana CONOVICI, "'Social Partnership' Between Church and State...cit.".

concerning religious institutions proper. From March 2009 on, and until the end of the year, the hottest "religious" problem debated in the Romanian Parliament was related to the Government's 2008 decision¹ to introduce electronic identification papers, and more specifically passports that would include an electronic chip storing biometrical data (two fingerprints). The Ordinance set a timetable for their introduction. Though presented as a solution that would facilitate free circulation, the document raised a wave of public concern both from within and without the religious sphere.

Heavily influenced by successive scandals in Greece concerning changes in the legislation on ID papers², as well as by a millenialist trend that successively interpreted bar codes and electronic chips as signifying or preparing the way for the Apocalyptic number and seal of the Beast (666)³, opposition to the Government's plan quickly spread through the Orthodox Church. Boosted by the vocal advocacy of some of the most radical neo-traditionalist Orthodox campaigners (some of which went so far so as to excommunicate biometric passport-holders), a hostile feeling towards the "biometric passports" spread like wildfire throughout the Church and forced bishops and eventually the Holy Synod to take a stance.

The Metropolitan Synod in Cluj-Napoca was the first to express serious reservations on the Government's proposal, on grounds of lack of respect for personal privacy and human dignity⁴. Voicing a human rights concern, this statement raised questions on the judiciousness of adopting a new technology that did not necessarily offer guarantees against data stealing⁵.

While the Romanian Patriarchy's Media Bureau had initially dismissed the "anti-biometric passports" scare, the Holy Synod eventually decided to appeal to the Government and the Parliament to provide alternative solutions to the "biometric passports" so as to appease the consciences and privacy concerns of its believers. Representatives of the Romanian Patriarchy attended parliamentary debates⁶, and

¹ Government's Ordinance no. 207/2008 on the Romanian citizens' right to freedom of circulation beyond the borders, otherwise known as the "biometric passports" law.

² For the situation in Greece, see, for example, Vasilios N. MAKRIDES, "Between Normality and Tension: Assessing Church-State Relations in Greece in the Light of the Identity (Cards) Crisis", in IDEM (hrsg.), *Religion, Staat und Konfliktkonstellationen im Orthodoxen Ost- und Südosteuropa. Vergleichende Perspektiven*, Peter Lang, Frankfurt am Main, 2005, pp. 137-178; also Victor ROUDOMETOF, "Orthodoxy As Public Religion in Post-1989 Greece", in Victor ROUDOMETOF, Alexander AGADJANIAN, Jerry PANKHURST, *Eastern Orthodoxy in a Global Age. Tradition Faces the Twenty-first Century*, Altamira Press, Walnut Creek, Lanham, New York, 2005, pp. 84-108.

³ For the atmosphere of the debate, see for example the forum discussions on "biometric passports" at: <http://forum.teologie.net/viewtopic.php?f=22&t=809> (accessed: January 28, 2013).

⁴ Criticism of the Government's Ordinance outside the religious sphere proper had been constructed primarily on the base of these arguments, as well.

⁵ The communiqué of the Metropolitan Synod of Cluj, Alba, Crișana and Maramureș was published for example in "Mitropolia Clujului crede că pașapoartele biometrice aduc o ofensă românilor", *Ziarul de Iași*, February 19, 2009, <http://www.ziaruldeiasi.ro/national-extern/mitropolia-clujului-crede-ca-pasapoartele-biometrice-aduc-o-ofensa-romanilor~ni595j> (accessed: January 28, 2013).

⁶ Independently of the Patriarchy representative, one of the most resolute campaigners against the "biometric passports", a monk from the Moldavian monastery Petru Vodă was also present in the Chamber of Deputies when the Ordinance was to be put to vote, and publicly

eventually the possibility to acquire documents without the incorporated electronic chip took the form of the one-year, temporary passports¹.

This debate is one that should draw the attention of religion scholars. First of all, it is a clear case of the internationalisation or "exportation" of a polemic issue from the agenda of one Orthodox-majority country, namely Greece, to another. Secondly, it is a case where a vocal concerned minority within the Orthodox Church manages to push into action local and Church-wide Synods (though, unlike in Greece, the tone of official documents was more moderate and – in the case of the Holy Synod – more conciliatory and open to compromise); acting as a within-the-Church civil society, a small network of associations and individual actors would prove capable to take up an issue both on the public political agenda and on the Church's official agenda.

A Shift in Social Mores? On Engagement, Assisted Reproduction, and Abortion Counselling

Family-related issues, social mores and bioethics-related issues appear to have been a constant concern of both the Romanian Parliament and the Government. During the 2008-2012 legislative term, several issues that had already been debated throughout the last decade have again been taken up, debated, analysed, and solved².

The situation of the family proper was addressed by changes in the Civil Code and of the documents associated with it. Endorsed by the Government, which demanded a vote of confidence on the document, the Civil Code introduced one important clarification on the definition of marriage and reintroduced the institution of engagement. First of all, the Civil Code explicitly stated that marriage was a union between a man and a woman, and is the only type of legal union acknowledged by the Romanian State, and under no circumstance did it acknowledge same-sex partnerships, whether contracted by marriage or civil partnership, performed in other countries. The matter had been an issue of contention during the 2001-2004 Government, and the definition of marriage in traditional terms had even been the object of a citizen's initiative-based constitutional amendment in 2006, as well as of a (failed) Draft-Law in 2008³.

The creation of the legal institution of civil partnership has also been proposed – and abandoned – in the Romanian Parliament in 2002⁴, and has been a matter for

protested against it ("Senatorii au amânat pentru luni votul final la pașapoartele biometrice", *Mediafax*, March 11, 2009).

¹ Decision no. 638/2009 of the Holy Synod of the Romanian Orthodox Church (February 25, 2009), online at: http://www.basilica.ro/stiri/sfantul_sinod_solicita_alternativa_la_pasapoartele_biometrice.html (accessed: January 28, 2013).

² For a discussion of the Romanian legal production on this topic see Lavinia STAN, Lucian TURCESCU, *Religion and Politics in Post-Communist Romania*, Oxford University Press, New York, 2007, pp. 171-198 and Iuliana CONOVICI, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice*, vol. II, cit., pp. 638-724.

³ It is worth noting that, in its opinion to the 2008 draft law, the Government had argued against this move, on the grounds of a trend of "liberalization" of social mores: see Iuliana CONOVICI, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice*, cit., pp. 677-678.

⁴ *Ibidem*, pp. 696-700 for details on the legal proposal and the reaction of the Romanian Orthodox Church.

discussion ever since. Though legally non-existing, the notion of "civil union" has been a rubric in the respective questionnaires of at least the last two censuses. The new Civil Code would at the same time reject the legal validity of such an institution, by refusing to acknowledge civil partnership contracted outside Romania, and encouraged the seemingly more marriage-oriented institution of engagement (art. 266-270), which allowed for the creation of a common patrimony and its legal protection under a distinctive regime.

However, while some might have expected for the proposal to have originated with religious institutions, it seems that the Orthodox Church had not been its source. Indeed, the negative reaction of the Romanian Orthodox Church, which took the rather extraordinary step of forbidding altogether the celebration of the religious rites of engagement separately from the marriage ceremony, points rather to another interpretation of the "reactivation" of the institution of engagement: the ancient institution is more likely to function as a "disguised" form of acknowledgment of a legal status for unmarried couples, as it is clearly supportive of the development of a common life and a common patrimony¹.

Finally, the Civil Code also acknowledged the rights of children resulted from third-party reproduction (art. 441-447). The latter's legal regime, however, was to be defined by a subsequent law. Two Draft-Laws on assisted reproduction (PL-x 690 of December 16, 2009) and third-party reproduction (PL 642 of October 17, 2011) have been presented to the Romanian Parliament. The first, an initiative of six PDL senators, dealt with several methods of assisted reproduction, including artificial and *in vitro* insemination, embryo transfer, and third-party reproduction (including by surrogate mothers). Tacitly adopted by the Senate, it was criticized for inconsistency and lack of precision by the Government, and was eventually rejected by the Chamber of Deputies².

The second Draft-Law, under review in the Chamber of Deputies, focusing on third-party reproduction, was a Government initiative: its scope was more limited, as it focused only on artificial and/or *in vitro* insemination with the help of third-party male and/or female reproductive material, it was intended to assist only married couples, and made no mention to surrogate mothers. This project was also criticized by advocates of third-party reproduction and by *pro-life* activists alike, and also drew stern criticism from the Conference of Catholic Bishops in Romania³.

¹ Decision no. 9027 of October 25, 2011 of the Holy Synod of the Romanian Orthodox Church (online at: http://www.patriarhia.ro/_layouts/images/File/CSF/9027-Comunicare%20Codul%20civil.pdf, accessed: January 28, 2013) bans the separate celebration of the two ceremonies "under any circumstances". The Holy Synod also criticized the facilitation of divorce by mutual agreement and the legal framework created for third-party assisted human reproduction for their possible negative impact "on the sanctity, unity and stability of the Christian family", but only took specific measures related to the institution of engagement. The Holy Synod reacted only to the adoption of Law 71/2011 on the application of the Civil Code; the new Code would be applicable since October 1, 2011.

² The project had also been criticised by NGOs dealing with infertility-related issues for the same: see for example SABIN GUȚAN, "Studiu asupra proiectului de lege privind reproducerea umană asistată medical", <http://infertilitate.com/2010/01/29/reactie-juridica-la-proiectul-de-lege-ruam-aflat-in-dezbatere-la-camera-deputatilor/> (accessed: January 28, 2013).

³ For a discussion on the forum of the association SOS Infertilitatea, see debates on: <http://forum.infertilitate.com/viewtopic.php?f=2&t=233&start=60>; for the Open Letter of the Catholic Conference of Bishops in Romania, see the Open letter published by Mgr. Cornel

Meanwhile, a Draft-Law on the interdiction of cloning and of biomedical practices that violate human rights and human dignity (Pl-x 695 of November 21, 2010, also pending in the Chamber of Deputies), supported by a cross-party group of MPs (PDL, PSD, UDMR, Minorities) forbade cloning, trafficking in human reproductive material and some forms of atypical creation of human embryos, with penal sanctions ranging from 6 months to 7 years imprisonment.

Two other Draft-Laws (Pl-x 821/2010, Pl-x 823/2010) that dealt with the issue of organ donors, transplant, rules for informed consent on organ donation, the manipulation of the bodies of deceased donors and rules for the situation where donors were not of legal age were rejected, only to be taken up in the extensive Emergency Ordinance no. 35 of June 27, 2012, sent for approval to the Chamber of Deputies (Pl-x 460 of November 12, 2012).

Finally, a legislative proposal by PDL member Silviu Prigoană for the legalization of prostitution (Pl-x 96/2011) – a recurrent topic in the Romanian Parliament since 1998 – was again rapidly rejected. Two more legislative proposals dealt with the restriction of access to Internet pornography. While Pl-x 220/2011, a Government proposal, was eventually rejected, another Draft-Law with a similar intent, aiming at the protection of underage children from “indecent” publications, be they printed or in electronic form (Pl-x 233 of May 29, 2012) is still under review, but was rejected by the Senate and is thus likely to fail, as well.

In 2012, a legislative proposal on pre-abortion counselling (Pl-x 348/2012) was presented by 51 MPs, most of them PDL members. It was another one of a series of proposals aimed at revising the liberal abortion laws in Romania and at instituting a mandatory 5-day period of counselling and reflection prior to the abortion proper¹.

The mandatory character of the counselling, and its framing in terms of the underlying assumption that human life begins at conception prompted vehement criticisms from a number of NGOs (ranging from well-known human rights associations like APADOR-CH and the Pro Europa League to smaller secular-humanist, feminist, gender-studies groups, family-planning associations, and including a Roma minority-rights group). These deemed the proposal illegal in scope and brutal in its methods².

Advocates of the proposal, including a number of Orthodox, Catholic and Evangelical Christian associations, and particularly several *pro-life* associations which sent to the Parliament a letter in support of the legislative proposal and insisted that the law would not ban abortion, but would rather guarantee the women's right to information, also stressed out the fact that a legislation imposing a waiting period and counselling existed in several other European countries³.

Damian, Auxiliary Bishop for Bucharest, president of the Conference's Commission for Families: http://www.arcb.ro/images/stories/documente/ScrisoareCER_08032012.doc; for the position of several Orthodox and Catholic pro-life associations: <http://www.culturavietii.ro/2012/03/06/opinia-organizatiilor-provita-romanesti-fata-de-noul-proiect-de-lege-privind-reproducerea-asistata/> (accessed: January 28, 2013).

¹ The last prominent such proposal had been rejected in 2004 (Iuliana CONOVICI, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice*, vol II, cit., pp. 652-654).

² For their position, see 22plus, XIX, no. 338, June 12, 2012, “Consilierea obligatorie pentru criza de sarcină, în conflict cu drepturile femeilor”, <http://www.ecpi.ro/wp-content/uploads/2012/07/22-plus-338.pdf>.

³ See their Letter of support at <http://provitabucuresti.ro/docs/lobby/memoriu-legeaconsilierii.pdf> (accessed: January 28, 2013).

Amidst polemic debates between advocates of either side, some of the initial supporters of the project withdrew their signature, and the proposal was eventually rejected by the Senate; it is still under review in the Chamber of Deputies.

In terms of a transposition into law of changes in social mores, the 2008-2012 legislative term has had mixed results. The legal reinvention of the institution of engagement, the clear definition of marriage in its strict heterosexual form, with the exclusion of all other legal possibilities, and the apparition of the Draft-Law on pre-abortion counselling, all point to morally "conservative" tendency in the Romanian legislation on social mores. Even one of the Draft-Laws on assisted reproduction focused exclusively on married couples.

However, the measures proposed in these Draft-Laws were themselves more ambiguous. While the legislation on marriage in the Civil Code is an unequivocal transposition into law of pre-existing proposals, the other projects are all of them more ambivalent. The legal reinvention of engagement has been legitimately perceived by major religious actors as a disguised form of acknowledgement of civil partnerships, and the Draft-Law on third-party assisted reproduction is also significantly at variance with the position of the major local churches on this point.

The existence of a contrasting morally "progressive" trend is illustrated by the first Draft-Law on assisted reproduction. On a different level, it is also present in the legislative proposal for the legalisation of prostitution. These Draft-Laws address sensitive issues in goal-oriented, medical and social perspective rather than in axiological terms. Furthermore, debates surrounding the first Draft-Law on assisted reproduction point to the fact that the socio-medical approach presented there had, in fact, been supported by the PDL-driven Government.

On the whole, during the 2008-2012 legislative term it has become apparent that a number of issues pertaining to the sphere of social mores, and in particular of problems raising bioethics concerns have become pressing issues in Romania as well. However, efforts of legislation in this area have been slow to materialise, and not generally coherent. Though the Government does acknowledge the need to tackle changes in social mores, the Parliament itself has so far taken very few clear steps in that direction. At the level of the Parliament itself, there appeared to be no clear consensus as to the general principles and methods to be employed in dealing with these problems.

Struggling Funeral Laws

Several other important legislative proposals date from 2009. Pl-x 592/2009, presented in April 2009 concerned cemeteries and funeral services. Initiated by 6 deputies (4 UDMR members, plus one MP from the National Minorities Group and one PSD representative), the Draft-Law has had a rather long legislative procedure. It dealt with private as well as with public cemeteries and crematories, and with funeral services. It proclaimed, amongst other things, that religious funerals should follow the established religious procedures of their respective denominations (art. 2.3).

Following the Law no. 489/2006 on religious freedom and the general status of denominations, it also stated that public cemeteries, administered by local authorities, should create sections for all recognised religious denominations, "at their request" and according to the structure of the local population.

However, though the Draft-Law greatly concerned recognised religious denominations, these had apparently not been consulted prior to the drafting of the legislative proposal, though, as was pointed out in the Government's assent, 90% of functioning cemeteries were confessional cemeteries¹. Consistently amended after its adoption by the Senate (November, 2009), and after consultation with the religious denominations², the Draft-Law was adopted by the Chamber of Deputies in November, 2010, but was sent back by the President for re-examination and further adjustments. The Draft-Law was eventually rejected by the Senate, and is thus likely to fail, though it is still under review in the Chamber of Deputies.

Another legislative proposal that dealt with unclaimed human bodies to be used for use in medical schools and research (Pl-x 263/2012), still under review in the Romanian Parliament, included the requirement that medical education institutions that make use of these bodies also ensure their funeral or incineration, including a religious service, creating the legal conditions for these institutions to receive the funeral subsidies usually granted to the family of the deceased.

In Need of A Holiday: From the National Day of Prayer to the Feast of St. Andrew

Last but not least, a recurring theme of interest for the Romanian Parliament during the last legislative term appears to have been the establishment of a number of legal holidays. One such Draft-Law, a cross-party proposal, advocated the establishment of a National Day of Prayer (Pl-x 672/2010); despite the fact that the majority of its supporters were members of the governing Liberal-Democratic Party, it was eventually rejected. Another proposal dealt with the recognition of two traditional holidays of the Muslim community (Pl-x 561/2011), and was likewise rejected, on procedural grounds.

Several other legislative proposals (Pl-x 719/2011, Pl-x 202/2012, Pl-x 204/2012, and BP 94/2011, the latter withdrawn before entering the legislative process) required the designation of the 30th of November – St. Andrew's feast in the Orthodox Christian calendar – as a legal holiday.

As pointed out by PSD deputy Victor Socaciu, the author of one of these legislative proposals, on June 6, 2011, the Patriarch of the Romanian Orthodox Church himself had sent to the Standing Bureau of the Chamber of Deputies a letter asking the Parliament to consider the idea³.

Though all Draft-Laws on the topic had received a negative assent from the Government, in July, 2012, under the new Victor Ponta Cabinet, St. Andrew's feast

¹ According to the Government's Opinion, online <http://www.cdep.ro/proiecte/2009/500/90/2/pvg592.pdf> (accessed: January 28, 2013). The Government endorsed the project with extensive reservations.

² See the comparative amendments of the Juridical Commission at http://www.cdep.ro/comisii/juridica/pdf/2010/rp592_09.pdf, accepted by the authors of the proposal, according to the transcript of the plenary session for the adoption of the project (<http://www.cdep.ro/pls/steno/steno.stenograma?ids=6914&idm=10>, accessed: January 28, 2013).

³ See the introductory argument to his proposal: <http://www.cdep.ro/proiecte/2012/200/00/2/em251.pdf> (accessed: January 28, 2013).

was eventually inscribed in the Labour Code as a legal holiday (Law 147 of July 23, 2012).

The "promotion" of the feast of St. Andrew to the status of a legal holiday is noteworthy as it was, in fact, the final step of a process that had started long before this legislative term within the Romanian Orthodox Church – namely in the 1990s. The latter had increasingly promoted the cult of St. Andrew, deemed the evangelizer of the Romanian territories, to the status of protector of Romania, and his feast to the status of national Church holiday¹. Though this may be deemed a symbolic victory for the Romanian Orthodox Church, we should note that its success was largely incidental – most probably a by-product of the new Social-Liberal Union's Government's bid for popularity, only a few months prior to the general elections.

Concluding Remarks

We may conclude that, on the one hand, religious institutions are deemed sufficiently important for the Romanian Government as to be placed under the direct supervision of the Prime Minister, an ambiguous move that signified both an increase in interest in the administration of Church-State relations *and* a tendency to separate this area from other policy areas, and to further compartmentalise this policy area. However, the move proves increasingly difficult, as legislation on religious institutions reaches beyond the issues of the internal governance of religious denominations and Church-State relations, and expands into other policy areas such as health and social assistance, education, etc. The move towards compartmentalisation has proved unsuccessful in the development of "social partnership" between Church and State, but, as we have seen, in the field of education there appear to be developing new notions even on the status of religion in the public sphere. Furthermore, "symbolic victories" such as the proclamation of St. Andrew's feast as a legal holiday in 2012 appear to be the mere results of specific political circumstances rather than effective signifiers of a will to raise the profile of one specific religion in the public space. Meanwhile, more elaborate legislation, as is the case of funeral laws, is dragging on.

As far as religious values are concerned, efforts to legislate in matters pertaining to social mores have had mixed results. The new Civil Code offers arguments in favour of the identification of both a "conservative" and a "progressive" trend in terms of family law and human reproduction, and this feature is reproduced in other bioethics-related laws, and competing Draft-Laws are informed by sometimes radically divergent worldviews.

Meanwhile, the 2008-2012 legislative term has also witnessed a phenomenon that we may deem relevant for the evolution of the public status of religion, that is, the rise of a "Christian civil society" with its own specific agenda and a growing visibility, and not necessarily directly connected to the "official" voices of their respective Churches (which they may occasionally push into action, but may also support, depending on the situation). Both in the case of the "biometric passports" dispute, where the voices involved have been more radical, and in the case of the Draft-Law on mandatory pre-

¹ Documented in Iuliana CONOVICI, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice*, vol. I, Eikon (Theologia socialis), Cluj-Napoca, 2009, pp. 320-324.

abortion counselling, supported by an ecumenical group of pro-life organisations, this particular segment of civil society would exhibit signs of internationalisation.

In conclusion, we may argue that the discussed efforts to change (or prevent change) in legislation in the public status of religion reveal the ambivalent attitudes of Romanian decision-makers towards religious institutions and particularly towards religious values. The tension between the two dimensions remains unsolved, and new legislation shows signs of aggravating rather than clarifying inconsistencies in the Romanian legislation on the public status religion(s).

